

Remarks

Claim 1 has been amended and claim 14 has been added. Claims 1-14 now stand in the application. Applicant hereby affirms the election of Group I, claims 1-10. In accordance with 37 C.F.R. §1.121(b) and (c), the prior pending paragraphs and claims with all changes shown by a conventional comparison system are provided in Appendix A.

Claim Rejections - 35 USC §112

Claim 1 stands rejected under 35 USC §112, second paragraph, in that the expression "said interior material" in lines 7-8 is said to lack antecedent basis. Claim 1 has been amended to address the Examiner's concerns raised under 35 USC §112, second paragraph.

Claim Rejections - 35 USC §102

Claims 1-4 and 6-7 stand rejected under 35 USC §102(b) as being anticipated by Wilson (5,502,937). Claim 1, as amended, is believed to be patentable over the cited reference for the following reasons.

Wilson discloses flexible composite materials suitable for use as fire barriers for either static or dynamic joints. In one embodiment, the flexible composite includes a layer of inorganic fibers and binder 28 sandwiched between two layers of inorganic fabric 34 which are, in turn, sandwiched between two layers of flexible intumescent fire retardant composite 29. Wilson, however, fails to disclose a fire stop article wherein a plurality of the fire stop articles can be used to create a fire stop in an opening having an area of greater than 300 square inches and a concrete substrate for adhesion capable of passing a hose stream test in accordance with ASTM Test E814 without any secondary reinforcement.

Regarding the argument that the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Applicant has amended claim 1 to indicate that the feature set forth in the last paragraph of claim 1 is not merely reciting the manner in which the claimed fire stop is intended to be employed, but is defining a functional characteristic of the claimed fire stop.

As shown in Table 1 and explained on page 10, lines 8-14 of the application, fire stop articles according to the invention can be arranged in an opening in a partition such as a wall, floor, or ceiling to provide a fire stop barrier capable of passing the hose stream test in

accordance with ASTM E814 in a 300 square inch opening for a partition constructed of concrete without any secondary reinforcement. The flexible composite of Wilson, as shown in Fig. 7, does not have this feature. The flexible composite includes two portions 72 and 74. First portion 72 extends from a mullion attachment pin horizontally and then vertically past attachment pin 18 between the insulation 12 and safing 14. In addition, the second portion 74 includes an "S" shaped portion that is accumulated over the upper surface of the safing 14. Such a configuration could not be used to create a fire stop in an opening having an area of greater than 300 square inches and a concrete substrate for adhesion capable of passing a hose stream test in accordance with ASTM Test E814. Accordingly, independent claim 1, as amended, is believed to be patentably distinguishable over Wilson. The remaining dependent claims, as depending from an allowable claim, are also deemed to be in condition for allowance.

New claim 14 is directed to a method of fire stopping a through-penetration in a wall comprising the steps of arranging a plurality of fire stop articles wherein each fire stop article includes an interior insulating material and an intumescent material arranged around at least a portion of said interior insulating material, said intumescent material consisting essentially of filler material, binder material, and a hydrated alkali metal silicate intumescent component, wherein the fire stop barrier is capable of passing a hose stream test in accordance with ASTM Test E814 for an opening having an area of greater than 300 square inches and a concrete substrate for adhesion without secondary reinforcement. Because none of the cited references fail to disclose such a method, claim 14 is believed to be allowable.

In view of the above, it is submitted that the application is in condition for allowance. Reconsideration of the rejection is respectfully solicited.

Please charge any fees required to enter this Amendment or credit any overpayments to Deposit Account No. 13-3723.

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Respectfully submitted,

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Appendix A

Version with Markings to Show Changes Made

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For: FIRE STOP ARTICLE

In the Claims

Claim 1 has been amended as follows:

1. (Amended) A composite fire stop article comprising:
 - (a) an interior insulating material; and
 - (b) an intumescent material arranged around at least a portion of said interior insulating material, said intumescent material consisting essentially of filler material, binder material, and a hydrated alkali metal silicate intumescent component;

[whereby at least one] wherein a plurality of said fire stop [article] articles can be used to create a fire stop in an opening [in a partition, said opening] having an area of greater than 300 square inches and [having] a concrete substrate for adhesion[, said fire stop being] capable of passing a hose stream test in accordance with ASTM Test E814 without secondary reinforcement.

Claim 14 is new.